

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH**

DWAYNE L. RIECO,

Plaintiff,

VS.

MICHAEL ZAKEN, MARK HAMMER,
PHYSICIANS ASSISTANT; WILLIAM
NICHOLSON, CHCA MEDICAL
SUPERVISOR; ERIC HINTEMAYER, C/O
4, CAPTAIN OF SECURITY; SAYLOR,
C/O 3; CRNP FETTERMAN,
HEALTHCARE PROVIDER; AND BII
STAFF JOHN/JANE DOE,

Defendants.

2:23-cv-00103

ELECTRONICALLY FILED

**MEMORANDUM ORDER ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION (DOC. NO. 74)**

This case has been referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 626(b)(1)(A) and (B), and Rules 72.C and 72.D of the Local Rules for Magistrate Judges.

On February 22, 2024, the Magistrate Judge issued a Report and Recommendation (Doc. No. 74) recommending that all claims against the Corrections Defendants be dismissed as frivolous pursuant to the screening provisions of 28 U.S.C. § 1915A. In the alternative, it was recommended that the Motion to Dismiss filed by the Corrections Defendants (Doc. No. 32) be granted and all claims against the Corrections Defendants be dismissed with prejudice for failure to state a claim.

The Report and Recommendation also recommended that the Motion to Dismiss filed by the Medical Defendants (Doc. No. 59) be granted and all claims against the Medical Defendants be dismissed with prejudice for failure to state a claim.

Plaintiff has filed two motions seeking a preliminary injunction or temporary restraining order. (Doc. Nos. 35 and 54). The Report and Recommendation also addressed those motions and recommended that both be denied as Plaintiff's claims were being dismissed for failure to state a claim.

Service of the Report and Recommendation was made, and Plaintiff was advised that written objections to the Report and Recommendation were due by March 11, 2024. To date, Plaintiff has not filed any objections. Where no objection is made to a report and recommendation, this Court will review the recommendation only for clear error. *See* Fed.R.Civ.P. 72(b), advisory committee notes; *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining that the court should in some manner review recommendations regardless of whether others were filed).

Upon review of the Report and Recommendation, as well as the Court's review of the record in this matter, the Court concurs with the Magistrate Judge's thorough analysis and legal conclusions. It has independently reached the same legal conclusions. The Court hereby **ADOPTS** the Report and Recommendation as its Opinion.

AND NOW, this 12th day of March 2024, **IT IS HEREBY ORDERED** as follows:

1. All claims against the Corrections Defendants are dismissed as frivolous pursuant to the screening provisions of 28 U.S.C. § 1915A. In the alternative, the Motion to Dismiss filed by the Corrections Defendants (Doc. No. 32) is **GRANTED** and all claims against the

Corrections Defendants are dismissed with prejudice for failure to state a claim. Leave to amend is **DENIED** as futile.

2. The Motion to Dismiss filed by the Medical Defendants (Doc. No. 59) is **GRANTED** and all claims against the Medical Defendants are dismissed with prejudice for failure to state a claim. Leave to amend is **DENIED** as futile.

3. Plaintiff's Motions for Preliminary Injunction and Temporary Restraining Order (Doc. Nos. 35 and 54) are **DENIED**.

So ORDERED this 12th day of March, 2024.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: DWAYNE L. RIECO
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All Counsel of Record
(via ECF electronic notification)